

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW WASHINGTON
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 SAN FRANCISCO
FAX 202.662.6291 LONDON
WWW.COV.COM BRUSSELS

STEPHEN A. WEISWASSER
TEL 202.662.5508
FAX 202.778.5508
SWEISWASSER@COV.COM

October 4, 2007

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communications
Development of Diversity in Video Programming
Distribution and Carriage
MB Docket No. 07-42

Dear Ms. Dortch:

During the course of October 3, 2007, representatives of the Hallmark Channel met with Chairman Kevin Martin, Commissioner Deborah Taylor Tate, and members of the Commission's staff to discuss its recently announced important initiatives to strengthen its program carriage rules to prevent discrimination and to protect independent programming services in their dealings with multichannel video programming distributors ("MVPDs").

In addition to Chairman Martin and Commissioner Tate, Henry S. Schleiff, President and CEO of Crown Media Holdings, Inc. (the "Hallmark Channel"), Charles Stanford, Executive Vice President – Business Affairs & General Counsel, and I met with: Amy Blankenship, legal advisor to Commissioner Tate; Michelle Carey, legal advisor to Chairman Martin; Rick Chessen, legal advisor to Commissioner Copps; Cristina Chou Pauzé, legal advisor to Commissioner McDowell; and Monica Desai, Mary Beth Murphy, Steven Broeckaert, John Norton, and Kathleen Costello of the Media Bureau and Elizabeth Andron of the Office of Strategic Planning.

The Hallmark Channel noted that the Commission's Notice of Proposed Rulemaking in this docket focuses on important questions concerning the relationship between increasingly consolidated MVPDs and independent programmers. While recognizing that the support of MVPDs contributed to the Hallmark Channel's growth over its first years of operation, it emphasized that it was participating in these proceedings because of the importance of the Commission's current efforts to ensure that

Ms. Marlene H. Dortch, Secretary
October 4, 2007
Page 2

its rules will create an environment in which MVPDs and independent programmers can engage in fair, marketplace-oriented negotiations.

In that context, the Hallmark Channel discussed its six-year history as an independent provider of video programming. In particular, it emphasized the Hallmark Channel's commitment to providing its viewers with important pro-social and wholesome family-oriented programming. The Hallmark Channel is distinguished by the fact that it offers on a full-time basis content devoid of gratuitous sex and violence or offensive language and therefore programming that is appropriate for all members of the family. As evidenced by its consistently high ratings overall and in key demographic groups, this service has made the Hallmark Channel highly popular among viewers across America. It is, indeed, among their top ten choices out of all Nielsen-measured advertising-supported cable networks.

The Hallmark Channel discussed the importance of several concurrent negotiations with MVPDs in which it is now engaged. The license fees paid to the Hallmark Channel by certain large MVPDs are manifestly inconsistent with its current status as a top-ten cable network and with its strong appeal among MVPD subscribers. The Hallmark Channel's success in correcting this disparity in upcoming agreements could provide meaningful information about the willingness of MVPDs to treat independent programmers – in this case, a top-tier programmer offering pro-social content – fairly by offering competitive rates and carriage terms.

The Hallmark Channel also noted that other independent programmers concerned about the effect that discrimination could have on their viability have filed comments suggesting effective options for preventing such conduct by MVPDs. The Hallmark Channel discussed the importance of program carriage dispute resolution mechanisms that provide programmers with meaningful discovery opportunities, promote streamlined negotiations and timely resolution of complaints, and facilitate the arbitration of disputes. While various proposals would achieve these goals, the Hallmark Channel particularly endorsed the availability of "baseball-style" mandatory arbitration provisions comparable to those adopted in the Commission's *Adelphia* merger order and applied in the *America Channel* decision. In the context of this rulemaking, the *America Channel* decision posed the question whether this arbitration procedure should be made available generally in disputes arising from failed negotiations between MVPDs and independent programmers. The Hallmark Channel answers this question with an emphatic yes.


In the Hallmark Channel's view, baseball-style arbitration would encourage parties to bargain realistically and reasonably with each other and would make it unnecessary for the Commission or an arbitrator to fashion detailed remedies with respect to specific compensation rates and terms of carriage. In situations of the kind that it might face, the Hallmark Channel urged the Commission to permit a programmer to institute mandatory arbitration if the parties have not reached a renewal agreement once a

Ms. Marlene H. Dortch, Secretary
October 4, 2007
Page 3

set number of days (perhaps ninety) have passed after the expiration of the most recent carriage agreement; failure to reach agreement within such a period would evidence a failed negotiation, entitling the programmer to invoke arbitration and seek appropriate discovery of relevant material in the MVPD's possession. Regulatory requirements would, in the Hallmark Channel's view, be fully satisfied if arbitral parties could appeal a final arbitration decision to the full Commission.

Finally, the Hallmark Channel expressed its intention to participate on an ongoing basis in this proceeding to help achieve an expeditious and comprehensive improvement in the Commission's program carriage procedures.

The attached materials were used in connection with yesterday's presentations.

Respectfully submitted,

Stephen A. Weiswasser

*Counsel to Crown Media
Holdings, Inc.*

cc: Hon. Kevin Martin
Hon. Deborah Taylor Tate
Amy Blankenship
Michelle Carey
Rick Chessen
Cristina Chou Pauzé
Monica Desai
Elizabeth Andrion
Mary Beth Murphy
Steven Broeckaert
John Norton
Kathleen Costello

Attachments